

11-1-1991

## Newsletter Vol.19 No.4 1991

National Center for the Study of Collective Bargaining in Higher Education and the Professions

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### Recommended Citation

National Center for the Study of Collective Bargaining in Higher Education and the Professions, "Newsletter Vol.19 No.4 1991" (1991). *National Center Newsletters*. 54.  
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# NEWSLETTER

NATIONAL CENTER  
FOR THE STUDY OF  
COLLECTIVE BARGAINING  
IN HIGHER EDUCATION  
AND THE PROFESSIONS

Published at Baruch College • City University of New York • Vol. 19, No. 4 • Nov/Dec 1991

## SEXUAL HARASSMENT: PART II SEXUAL HARASSMENT: PREVENTION AND DETECTION

by Leona L. Barsky, Esq.\*

**Editor's Note:** Sexual Harassment: Part I (Newsletter, Vol. 19, No. 3) contained articles on the "definition" of sexual harassment by the United States Equal Employment Opportunity Commission ("EEOC") and the courts. EEOC guidelines on conduct of a sexual nature that may constitute sex discrimination in employment and federal and state court developing standards of legally actionable workplace sexual conduct were discussed for both *quid pro quo* and hostile environment type harassment.

Sexual Harassment: Part II (Newsletter, Vol. 19, No. 4) outlines methods for employers to reduce their risks of being subject to sexual harassment complaints by taking affirmative steps to eliminate sexual harassment at the workplace. In Sexual Harassment: Prevention and Detection, Leona L. Barsky discusses legal requirements for employment policies and procedures that address sexual harassment and introduces a seven point program for employers to design and communicate to their employees effective policies against sexual harassment.

Sexual Harassment: Part III (Newsletter, Vol. 20, No. 2) will include articles on the increasing tort liability associated with sexual harassment complaints and the new legal remedies available to sexual harassment complainants following the recent enactment of the Civil Rights Law of 1991.

Articles on sexual harassment published in the Newsletter were written from presentations by the authors at a seminar on sexual harassment held at Baruch College on February 26, 1992.<sup>1</sup>

<sup>1</sup> The seminar was held subsequent to the date of publication of this Newsletter.

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### I. Introduction

Even though Title VII has barred sex discrimination in the workplace for over twenty-five years, employers are still faced with the problems of improper and impermissible sexual advances, touching and comments in the workplace. With the recent controversy over the Clarence Thomas nomination and the changes implemented by the Civil Rights Act of 1991, employers are becoming increasingly concerned with the prevention and detection of sexual harassment in the workplace. Employers and employees learned at least one lesson from the Clarence Thomas nomination hearings -- sexual harassment is an old misunderstood problem that is still with us.

Employers are currently facing widespread confusion over the type of behavior that is acceptable in the workplace. The confusion stems from the tendency of employees to carry over sexually-oriented behavior from social settings to the workplace without an acknowledgement of the different environments and an understanding of the consequences. In light of the developing case law and the increasing publicity about "office romance," employers need to be more diligent about creating a work environment inhospitable to the casual suggestive comments, the consistent inquiries into personal and intimate activities, the remarks about appearance and dress, and the touching of another employee which extends beyond the mere handshake. To create a harassment-free work environment, employers need to recognize that sexually-oriented behavior which makes employees uncomfortable, even if

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seemingly innocent and de minimis, should be addressed and eliminated.

By implementing a seven point program aimed at preventing and detecting sexual harassment in the workplace, employers can establish policies and procedures which will discourage harassing conduct, comply with the rapidly evolving law on sexual harassment, build employee morale and improve job performance and, at the same time, minimize potential liability and the likelihood of costly and time consuming litigation.

## II. Legal Requirements for Sexual Harassment Policies and Procedures

In 1980, the Equal Employment Opportunity Commission ("EEOC") issued its regulations on sexual harassment announcing that "prevention is the best tool for the elimination of sexual harassment."<sup>1</sup> The EEOC imposed an affirmative duty on the employer to "take all steps necessary to prevent sexual harassment from occurring" including (i) expressing strong disapproval of sexual harassment, (ii) developing appropriate sanctions, (iii) informing employees of their right to raise and how to raise the issue of sexual harassment, and (iv) developing methods to sensitize employees.<sup>2</sup>

The Supreme Court in its first and only sexual harassment case to date -- Meritor Savings Bank v. Vinson -- decided in 1986 -- evaluated an employer's policy and procedure on sexual harassment.<sup>3</sup> The Supreme Court declined to issue a definitive rule on employer liability for hostile work environment sexual harassment, but cited the EEOC's suggestion that an employer would be insulated from liability if the employer had an express anti-harassment policy and a reasonably available and responsive complaint procedure, and did not know about the alleged harassment.<sup>4</sup> The Court noted that a complainant's failure to notify the employer does not necessarily insulate the employer from liability.<sup>5</sup>

On the basis of the facts before it, the Court found the employer's generalized nondiscrimination policy and the complaint procedure insufficient to ensure against liability. The nondiscrimination policy did not specifically address sexual harassment and the complaint procedure began with the supervisor who, in this case, was accused of sexual harassment.<sup>6</sup>

In 1990, the EEOC issued revised policy guidance on sexual harassment for its field personnel.<sup>7</sup> This policy guidance provides helpful descriptions of

appropriate preventive and remedial steps. The EEOC's policy guidance describes the elements of a prevention program which consists of a policy, a complaint procedure and communications with employees. According to the EEOC, the employer should have an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented, and a complaint procedure "designed to encourage" employees to make complaints.<sup>8</sup> The procedure should allow employees to complain to someone other than the immediate supervisor, ensure confidentiality to the extent possible, provide effective remedies and protect employees from retaliation.<sup>9</sup> The employer should discuss the subject of sexual harassment and the policy with employees, express strong disapproval and explain the sanctions for violations of the policy.<sup>10</sup>

According to the EEOC, the employer has an affirmative duty to investigate complaints and remedy known sexual harassment.<sup>11</sup> The employer should, therefore, promptly and thoroughly investigate when it receives a complaint or otherwise learns about alleged sexual harassment. The employer's remedial actions should include immediate and appropriate steps to end the harassment, prevent the harassing conduct from reoccurring, restore lost employment opportunities or benefits to the alleged victim and take disciplinary action against the alleged offender, if warranted, as a result of the investigation.<sup>12</sup> The EEOC will close a sex discrimination charge and take no further action if its investigation establishes that the employer eliminated the sexual harassment, made the alleged victim whole and instituted preventive measures.<sup>13</sup>

Recent judicial decisions illustrate some of the ineffective and inappropriate preventive and remedial steps taken by employers to combat sexual harassment. For example, the courts have concluded that preventive and remedial steps were defective where (i) an employer failed to implement its policy on sexual harassment,<sup>14</sup> (ii) an employer failed to conduct a thorough and comprehensive investigation of a sexual harassment complaint,<sup>15</sup> (iii) an employer provided a slow and ineffectual response to a sexual harassment complaint,<sup>16</sup> (iv) an employer failed to sanction an employee who was found to have engaged in sexual harassment,<sup>17</sup> and (v) an employer failed to prevent repetition of the sexually harassing conduct by the same offender.<sup>18</sup>

One case in particular provides a graphic example of ineffectual preventive and remedial actions taken by an employer. Last year, the court, in Robinson v. Jacksonville Shipyards found that a female welder had

been exposed to a hostile work environment in a shipyard consisting of repeated sexual jokes and comments, rampant sexually-oriented pictures, pinups and calendars and rejection by her male coworkers.<sup>19</sup> The court found that the employer's sexual harassment policies and complaint procedures and its responses to complaints from the plaintiff and other women workers were totally ineffectual.

The employer's first policy on sexual harassment was adopted in 1980 and stated that suggestive remarks, physical advances or intimidation would not be tolerated. The policy instructed employees to bring complaints to the EEO coordinator and was posted in the shipyard.<sup>20</sup> The court found that the policy was ineffective because it did not provide the identity of the EEO coordinator and was not distributed in the same manner as other company policies.<sup>21</sup>

The employer's second policy on sexual harassment was adopted in 1987 while the lawsuit was pending and included specific definitions of sexual harassment, identified one employee to receive complaints and promised an immediate investigation of complaints and the imposition of sanctions on offenders.<sup>22</sup>

The court found that the second policy was ineffective because it did not identify alternative employees to receive complaints and it was not included in the employee manuals, the affirmative action plan or the EEO poster.<sup>23</sup> The court was concerned with the lack of sexual harassment training for managers, supervisors and employees and concluded that all employees lacked the understanding necessary to implement and comply with the policy.<sup>24</sup>

The court focused on the inadequacies of the employer's responses to complaints about sexual harassment. The court determined that the employer had failed to take the complaints seriously, to conduct thorough investigations, to impose discipline consistent with the seriousness of the offenses, to document and maintain records about the complaints, and to prevent repetition of the sexually harassing conduct.<sup>25</sup> The court concluded that the employer's handling of complaints deterred employees from reporting incidents and prevented the employer from analyzing the level of sexual hostility in the workplace.<sup>26</sup> The employer's defense of lack of knowledge about the hostile work environment was rejected because the court found that the employer had "received actual knowledge of the state of the work environment, but, like an ostrich, . . . elected to bury its head in the sand rather than learn

more about the conditions to which female employees . . . were subjected."<sup>27</sup>

In light of the employer's history of condoning sexually harassing conduct and failing to redress complaints, the court ordered the employer to adopt a policy and procedure substantially in the form proposed by the plaintiff and the NOW Legal Defense and Education Fund which had assisted the plaintiff with her lawsuit.<sup>28</sup> The policy consists of five sections which are described briefly.

The first section entitled "Statement of Policy" contains an introduction, general policy statement and the legal definition of sexual harassment. The second section entitled "Statement of Prohibited Conduct" lists specific examples of prohibited conduct. The third section entitled "Schedule of Penalties for Misconduct" contains a list of specific penalties geared to the nature of the offense and the status of the offender. The fourth section entitled "Procedures for Making, Investigating, and Resolving Sexual Harassment and Retaliation Complaints" identifies a number of employees to receive complaints and conduct investigations, details the investigative process and provides confidentiality assurances. The fifth section entitled "Procedures and Rules for Education and Training" explains the dissemination of the policy and the training and education programs for managers and supervisors, investigators and rank and file employees.<sup>29</sup>

The Jacksonville Shipyards decision provides employers with an example of a comprehensive policy which can be used as a model for designing policies that are more explicit and effective. Employers should note, however, that this policy contains some provisions which are more appropriate for supervisory guidelines than a generally disseminated policy and certain punitive provisions which are designed explicitly to remedy the hostile work environment at the shipyard.

### III. Seven Point Program for Preventing and Detecting Sexual Harassment in the Workplace

By implementing the following seven point program, your organization can be in the forefront of efforts to combat sexual harassment in the workplace and avoid costly mistakes. The seven point program consists of (1) top management support for a strong stance against sexual harassment, (2) managerial and supervisory accountability for a harassment-free work environment, (3) a clear written policy specifically prohibiting sexual harassment, (4) an effective complaint

procedure, (5) communication and dissemination of the policy and complaint procedure as well as the message that sexual harassment will not be tolerated, (6) the training and education of managers, supervisors, the designated investigators and rank and file employees; and (7) prompt and effective responses to complaints and consistent implementation and enforcement of the policy.

**A. Top Management Support for a Strong Stance Against Sexual Harassment**

As a first step, enlist the support of top management for the campaign against sexual harassment. Top management should be willing to send the message that sexual harassment in any form will not be tolerated and that sanctions will be swift and serious. This support is crucial for the effectiveness of the policy and complaint procedure.

Top management needs to understand that the work environment should be free of the blatant forms of sexual harassment as well as the subtle forms such as sexual jokes and comments and sexually-oriented pictures. The expert on sexual harassment training and education for the plaintiff in Jacksonville Shipyards testified that:

Management's perception concerning the scope and range of sexual harassment provides an important indicator of the hostility of the work environment. The more subtle forms of sexual harassment, such as sexual comments, sexual teasing and leering, often fall outside management's perception. As a general proposition, the higher an individual is on the management ladder, the more likely he is to regard sexual harassment as an exaggerated problem and the more likely he is to minimize complaints from women concerning what they perceive to be harassing behavior.<sup>30</sup>

Top management might need to be convinced of the need for the campaign against sexual harassment. The human resources department can respond with information on the pervasiveness of the problem, including past complaints, and potential exposure, and obtain further information through informal surveys, questionnaires or interviews of employees.

**B. Managerial and Supervisory Accountability for a Harassment-Free Work Environment**

As part of its commitment to the campaign against sexual harassment, top management should make managers and supervisors accountable for maintaining a harassment-free work environment and implementing and enforcing the policy against sexual harassment. This accountability can be established through the supervisory guidelines, the communications to managers and supervisors, the training on sexual harassment and the evaluation of performance and the awarding of compensation based, in part, on successful efforts to prevent and detect harassment.

**C. Clear Written Policy Prohibiting Sexual Harassment**

The crucial part of the seven-point program is a clear written policy prohibiting sexual harassment in the workplace. The policy should contain the following information: (i) the purpose of the policy; (ii) the significance of the issue and the organizational philosophy on the issue; (iii) the legal and behavioral definitions of sexual harassment; (iv) how employees should handle sexual harassment; (v) the complaint procedure including the identity of several employees designated to receive complaints; and (vi) the description of the employer's response to complaints including the investigation and the discipline of offenders.

Prior to Jacksonville Shipyards, many employers used brief one-page sexual harassment policies that reiterated the legal definitions of sexual harassment, mentioned the complaint procedure, identified one or more employees to receive complaints, and stated that offenders will face disciplinary action, up to and including discharge. The Jacksonville Shipyards decision illustrates that a cursory sexual harassment policy is not necessarily adequate to insulate an employer from liability and to prevent and detect sexual harassment.

The policy should provide behavioral definitions of sexual harassment and illustrations which extend beyond the parameters for harassment under Title VII. Thus, the policy should mention that prohibited conduct includes, for example, sexual jokes, sexually-oriented pictures, abusive language, inquiries into personal and sexual activities, sexual teasing and ridicule, and leers. The behavioral definition sends top management's

message that the work environment should be free of inappropriate sexually-oriented conduct.

The policy should prohibit retaliation against employees for filing complaints, furnishing information or participating in an investigation in order to protect those employees who come forward. The policy should establish that managers and supervisors are responsible for preventing and detecting sexual harassment and are available to address employees' concerns.

The policy should be specifically tailored to the norms and environment of the workplace and consistent in style and format with other policies. It is not advisable to copy a policy from another employer or a judicial decision such as the Jacksonville Shipyards case. Investigators from the anti-discrimination agencies are interested in whether the employer has analyzed its policy on sexual harassment and actually adopted a policy which is appropriate and effective in the context of the organization.

#### **D. Complaint Procedure**

The complaint procedure is an essential element of the sexual harassment policy and should be designed to encourage employees to come forward with complaints. The policy should encourage employees subjected to sexual harassment to notify the offender that the behavior is unwelcome and to notify management. The policy should provide for the filing of complaints with a number of employees such as the human resources director or EEO manager, the immediate supervisor, the department head or any member of management. Employees who are witnesses to sexual harassment should also be encouraged to notify management.

The policy should provide a brief description of the investigative process, identify who will conduct the investigation and provide for the reporting of the result to the complainant and the alleged offender. The policy should provide confidentiality assurances to the extent practical and appropriate under the circumstances. The employer cannot provide absolute confidentiality guarantees because some limited disclosure of information will be made in connection with the investigation.

The policy should describe the range of disciplinary action and sanctions that will be taken against an employee who is found to have engaged in sexual harassment, such as counselling, mandatory attendance of sexual harassment programs, warning,

suspension, demotion, denial of bonus, probation or discharge.

#### **E. Communication and Dissemination of the Policy**

As the court noted in Jacksonville Shipyards, the existence of a policy alone is not sufficient.<sup>31</sup> Employees have to know about and understand the policy. Communication and dissemination of the policy is, therefore, crucial. The policy should be signed by the appropriate individual and distributed to all employees with a cover memorandum from a member of top management, preferably the president. The policy should be periodically reaffirmed by the employer and reissued to employees.

The employer should distribute the sexual harassment policy in the same manner as the other policies and include the policy in the employee handbook. The policy should be posted on bulletin boards, given to new employees at orientation and periodically discussed at staff meetings. This constant communication, both written and oral, will send a message to all employees that sexual harassment is not condoned and that the complaint procedure is effective.

#### **F. Training of Managers, Supervisors, Investigators and Employees**

Employees' knowledge about and understanding of sexual harassment and the employer's policy on the issue is developed through training and education of employees. The training and education should, if possible, consist of separate programs for top level management, supervisors and other managers, the designated investigators and rank and file employees.

The presentation should be geared to the level of the employee and the goal of the program. All of the programs should cover basic topics such as the definitions of sexual harassment, the reasons for the concern about sexual harassment from the perspective of the organization and the individual employee and the steps that can be taken to combat sexual harassment.

The programs for supervisors, managers and rank and file employees should educate them about how to avoid harassing behavior and how to handle such behavior. The supervisors and managers need to understand the importance of avoiding and stopping subtle behavior such as comments and jokes that can create an unprofessional and sexually charged work environment. The expert on sex stereotyping for the

plaintiff in Jacksonville Shipyards explained that men and women respond differently to sex issues in the workplace. According to that expert, research has revealed that two-thirds of the surveyed men said that they would be flattered if they were sexually approached in the workplace while two-thirds of the surveyed women said that they would be insulted.<sup>32</sup>

The program for supervisors and managers should also cover appropriate responses to a sexual harassment complaint. For example, the untrained male supervisor would probably have one of the following responses when faced with a sexual harassment complaint from a female subordinate: (i) you are a big girl and can handle this on your own; (ii) make light of the complaint; or (iii) make some promise such as I'll talk to the offender and then fail to follow up.

The program can take many forms such as videos, lectures, group discussions and role playing and can be performed by employees or consultants. Professional trainers recommend role playing as an effective way to accomplish behavioral change and, if possible, attitudinal change.

After you decide on the appropriate program, the human resources department can set up the schedule for employee attendance and announce the schedule, purpose and content of the program in a memorandum to all employees. The memorandum should set the tone for the program and reiterate top management's position on sexual harassment.

#### **G. Prompt and Effective Responses to Complaints and Consistent Enforcement and Implementation of the Policy**

The effectiveness of a comprehensive sexual harassment policy and complaint procedure will be judged by the employer's enforcement of the policy and response to complaints about sexual harassment. The employer should therefore investigate complaints promptly and thoroughly, even if the complained-of behavior appears to be insignificant, and take the appropriate remedial action when the investigation reveals that sexual harassment has occurred.

In one recent case, Ellison v. Brady, the court found that the aggrieved employee had raised factual issues regarding whether her employer properly disciplined the co-worker who engaged in sexually harassing conduct.<sup>33</sup> The court noted that the remedies

have to be "reasonably calculated to end the harassment" and should persuade harassers to discontinue the objectionable conduct.<sup>34</sup>

In this case, the co-worker repeatedly asked the employee to have lunch, pestered the employee with questions and hung around her desk and sent a note and a letter to the employee detailing his feelings for her. In response to the aggrieved employee's oral complaint, the supervisor repeatedly told the co-worker not to contact the employee and transferred him to another office. However, the employer subsequently agreed to return the offender to the original office after six months through a settlement of his union grievances. When the complainant learned that the offender would be returning to her office, she asked for a temporary transfer and filed a formal complaint, fearing that the harassment would reoccur. The offender apparently sent her another letter about his feelings after he learned about his transfer.<sup>35</sup>

The court faulted the employer for not taking disciplinary measures against the offender and for failing to express strong disapproval of the conduct, reprimanding the offender, placing him on probation or informing him that repetition of the conduct would result in suspension or termination.<sup>36</sup> The court concluded that the six month transfer of the offender was not reasonably calculated to end the harassment or assessed proportionately to the seriousness of the offense.<sup>37</sup> The court noted that the employer failed to consult the complainant before agreeing to return the offender to her office and that the complainant should not have to work in a less desirable location to avoid harassment.<sup>38</sup>

The Ellison case illustrates that employers have to impose discipline commensurate with the violation, take steps to ensure that the complained-of conduct does not reoccur, warn offenders that reoccurrences will result in further disciplinary action and avoid personnel actions that appear to punish the complainant.

#### **IV. Conclusion**

In sum, the seven point program is designed to prevent and detect sexual harassment and should improve the quality of the work environment, ultimately decrease the number of complaints and help employers defend against sexual harassment claims.

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## ENDNOTES

1. 29 C.F.R. § 1604.11.
2. 29 C.F.R. § 1604.11(f).
3. Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).
4. Meritor Savings Bank, 477 U.S. at 70-71.
5. Id. at 72-73.
6. Id.
7. EEOC: Policy Guidance on Sexual Harassment, Fair Empl. Prac. Manual (BNA) 405:6681-6701 (March 19, 1990).
8. EEOC: Policy Guidance on Sexual Harassment, Fair Empl. Prac. Manual (BNA) 405:6699.
9. Id.
10. Id.
11. EEOC: Policy Guidance on Sexual Harassment, Fair Empl. Prac. Manual (BNA) 405:6699-6700.
12. Id. at 6700.
13. EEOC: Policy Guidance on Sexual Harassment, Fair Empl. Prac. Manual (BNA) 405:6701.
14. Sanchez v. City of Miami Beach, 720 F. Supp. 974, 979 (S.D. Fla. 1989).
15. Ross v. Double Diamond, Inc., 672 F.Supp. 261, 273 (N.D. Tex. 1987).
16. Waltman v. Int'l Paper Co., 875 F.2d 468, 478-79 (5th Cir. 1989); Yates v. Avco Corp., 819 F.2d 630, 635-36 (6th Cir. 1987).
17. Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991).
18. Brooms v. Regal Tube Co., 881 F.2d 412, 421 (7th Cir. 1989).
19. Robinson v. Jacksonville Shipyards, Inc., 760 F. Supp. 1486 (M.D. Fla. 1991).
20. Id. at 1510.
21. Robinson, 760 F. Supp. at 1510.
22. Id. at 1517-18.
23. Id. at 1518-19.
24. Id.
25. Robinson, 760 F. Supp. at 1518-19, 1530-32.
26. Id. at 1530-31.
27. Id. at 1530.
28. Id. at 1537-38.
29. Robinson, 760 F. Supp. at 1541-46.
30. Robinson, 760 F. Supp. at 1507.
31. Robinson, 760 F. Supp. at 1519-20.
32. Robinson, 760 F. Supp. at 1505.
33. Ellison v. Brady, 924 F.2d 872 (9th Cir. 1991).
34. Ellison, 924 F.2d at 883.
35. Id. at 873-74.
36. Ellison, 924 F.2d at 882-83.
37. Id. at 883.
38. Id. at 883.

## FACULTY UNIONS RESPOND TO SEXUAL HARASSMENT

The issue of unequal treatment of male and female faculty in higher education institutions with regard to appointment, tenure, promotion and other terms and conditions of employment has long been a concern in academic circles. Federal equal employment legislation and faculty union activism in the late 1960s and early 1970s remedied some of the equity issues of the past. Yet with insufficient progress made toward eliminating discrimination, sexual harassment -- a form of sex discrimination -- continues to be addressed by faculty unions representing the interests of American college and university professors.

The American Association of University Professors (AAUP), the American Federation of Teachers (AFT) and the National Education Association (NEA) continue to publish articles, issue statements and provide counsel on how to recognize, remedy and prevent sexual harassment in higher education.

The NEA, in its policy statement on sexual harassment, urges its membership to work with academic institutions to "establish strong policies defining and prohibiting

sexual harassment," to educate campus personnel to "recognize, understand, prevent and combat sexual harassment" and to implement internal grievance procedures that encourage the "reporting of incidents of sexual harassment" and that are designed to remedy complaints while protecting "the rights of all parties."

In an article in Thought & Action: The NEA Higher Education Journal, not only the primary effect of sexual harassment, sex discrimination, but another aspect, secondary harassment of the sexual harassment complainant in the form of retaliation and character assassination, are discussed. See, Little, Doric. "Sexual Harassment: Faculty, Student Considerations." Thought & Action: The NEA Higher Education Journal, Vol. VIII, No. 1, Spring 1992, pp. 5-12.

In the fall of 1992, NEA will publish a monologue entitled: "Sexual Harassment in Higher Education: Concepts and Issues." The publication includes a history of sexual harassment, provides a definition of sexual harassment and reviews recent court cases and campus policies involving sexual harassment.



The AAUP, in its suggested policy and procedures for handling sexual harassment complaints, addresses not only the traditional effect of sexual harassment - - sex discrimination, but also clearly exposes sexual harassment as a veiled impediment to academic freedom. The AAUP recommends that academic institutions adopt a policy against sexual harassment and provides the following definition:

It is the policy of this institution that no member of the academic community may sexually harass another. Sexual advances, requests for sexual favors, and other conduct of a sexual nature constitutes sexual harassment when:

1. Any such proposals are made under circumstances implying that one's response might affect such academic or personnel decisions as are subjects to the influence of the person making such proposals; or
2. Such conduct is repeated or is so offensive that it substantially contributes to an unprofessional academic or work environment or interferes with required tasks, career opportunities or learning; or
3. Such conduct is abusive of others and creates or implies a discriminatory hostility toward their personal or professional interests because of their sex.

See, Sexual Harassment: Suggested Policy and Procedures for Handling Complaints in AAUP Policy Documents and Reports 113 (Washington, D.C.:1990).

The AAUP further suggests that institutions implement procedures to handle sexual harassment complaints that include corrective action or disciplinary measures for offending personnel.

Looking at another side of the sexual harassment issue in the academy, in its publication, Academe, AAUP noted a disturbing number of recent cases around the country in which severe penalties have been imposed on faculty members accused of sexual harassment without the safeguards of academic due process. See, Due Process in Sexual Harassment Complaints, 77 Academe 47 (Sept.- Oct. 1991).

In a recent issue of its newspaper, On Campus, the AFT examined the severity of sexual harassment and sex discrimination on campus. It noted that despite a decade of efforts on the part of administrations to address the

problem, research shows that it is still pervasive. The article suggested that in an intermediary capacity, faculty organizations can play a strong role in settling disputes internally and in offering legal support to victims in filing formal complaints. See, On Campus, Vol. 11, No. 4, February 1992.

The AFT also has issued an informational brochure that defines harassment, suggests appropriate actions to take when harassment occurs and recommends effective measures unions can take to create an environment in which sexual harassment is not tolerated. These measures include fostering greater labor-management cooperation, providing education and training programs, conducting surveys to monitor the extent of the problem, and negotiating special grievance procedures for handling disputes when they occur.

Due to the sociological and psychological dynamics of sexuality in our society and to continued imbalances of power between males and females in the workplace, persons may continue to experience unlawful sexual harassment on the job. Faculty representatives, however, continue to work to eliminate the effects of such unlawful behavior and to remedy its effects by educating their members in matters related to sexual harassment and by encouraging and providing models of sexual harassment prevention for both institutions and individuals to adopt.

Editor's Note: This article was prepared with the assistance of Ann H. Franke, Associate Secretary and Counsel to the AAUP; Christine Maitland, Coordinator of Higher Education for the NEA; and Barbara McKenna, Higher Education Editor for the AFT.

#### NATIONAL CENTER NEWSLETTER

A publication of the National Center issued four times during the year. Annual subscription rate: \$25; Single copy, \$6.25; free to Center members. Back issues available. ISSN 0737-9285

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